

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 MARY ARMITAGE,

Case No.: 2:18-cv-01175-APG-PAL

4 Plaintiff

Order Remanding Case

5 v.

6 MANDARA PSLV, LLC,

7 Defendant

8 I previously ordered defendant Mandara PSLV, LLC to show cause why this case should
9 not be remanded because there was no evidence that the amount in controversy exceeds \$75,000.
10 ECF No. 6. Mandara responded by arguing plaintiff Mary Armitage has alleged severe injuries
11 including chemical burns to her feet, sciatica nerve injury, lower back pain, and restless leg
12 syndrome. ECF No. 7 at 2. Mandara also asserts that Armitage demanded “policy limits” on
13 Mandara’s insurance, which would be \$1 million, although there is no evidence Armitage knew
14 the policy limit amount. *Id.* at 2-3. Mandara contends that given the nature of the injuries alleged
15 and jury verdicts in other cases, removal is appropriate. *Id.* at 5-6. Finally, Mandara asserts that
16 in a phone call with Armitage’s counsel after removal, counsel refused to stipulate that Armitage
17 would not seek more than \$75,000. *Id.* at 6-7.

18 Armitage’s counsel filed a declaration in response, clarifying that in the referenced phone
19 call, he advised Mandara’s counsel that Armitage was not going to seek exemption from the state
20 court mandatory arbitration program that caps damages at \$50,000. ECF No. 8 at 2. He also
21 stated that Armitage would not agree to stipulate that her damages would be capped at \$75,000
22 only in the event that Armitage won an arbitration award and Mandara then requested a trial de
23 novo. *Id.* at 2-3.

1 If removal is sought based on diversity of citizenship, “the sum demanded in good faith in
2 the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C. § 1446(c)(2). If
3 the initial pleading seeks nonmonetary relief or “a money judgment, but the State practice either
4 does not permit demand for a specific sum or permits recovery of damages in excess of the amount
5 demanded,” then “the notice of removal may assert the amount in controversy,” but only “if the
6 district court finds, by the preponderance of the evidence, that the amount in controversy exceeds
7 the amount specified in section 1332(a).” 28 U.S.C. § 1446(c)(2).

8 Courts “strictly construe the removal statute against removal jurisdiction.” *Gaus v. Miles*,
9 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). “Federal jurisdiction must be rejected if there is
10 any doubt as to the right of removal in the first instance.” *Id.* “The ‘strong presumption’ against
11 removal jurisdiction means that the defendant always has the burden of establishing that removal
12 is proper.” *Id.* “Normally, this burden is satisfied if the plaintiff claims a sum greater than the
13 jurisdictional requirement,” but where “it is unclear what amount of damages the plaintiff has
14 sought,” as with claims governed by Nevada Rule of Civil Procedure 8(a), “then the defendant
15 bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional
16 amount.” *Id.*

17 To determine the amount in controversy on removal a court may consider the facts alleged
18 in the complaint and in the notice of removal, and may “require the parties to submit summary-
19 judgment-type evidence relevant to the amount in controversy at the time of removal.” *Singer v.*
20 *State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (quoting *Allen v. R&H Oil &*
21 *Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995)). A court also has discretion to consider a
22 plaintiff’s formal judicial admission that the amount in controversy is met. *Id.* at 376.

1 In *Gaus*, the Ninth Circuit vacated the district court's grant of summary judgment because
2 the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with instructions
3 to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed suit in Nevada
4 state court, seeking damages "in excess of \$10,000." Upon removal, the removing defendant
5 alleged that "the matter in current controversy . . . exceeds the sum of \$50,000." *Id.* at 565. The
6 Ninth Circuit found that the removing defendant "offered no facts whatsoever to support the
7 court's exercise of jurisdiction," and held that "[t]his allegation, although attempting to recite some
8 'magical incantation,' neither overcomes the 'strong presumption' against removal jurisdiction,
9 nor satisfies [the removing defendant]'s burden of setting forth, in the removal petition itself, the
10 underlying facts supporting its assertion that the amount in controversy exceeds \$50,000." *Id.* at
11 567.

12 The medical bills at present are approximately \$3,000. ECF No. 7-2 at 3. That is many
13 multiples below the statutory threshold. Further, Armitage has agreed to submit to Nevada's
14 mandatory arbitration program, capping her damages at \$50,000. That strongly suggests that the
15 amount in controversy in this case was nowhere near \$75,000 at the time of removal. Mandara
16 has not met its burden of showing this court's diversity jurisdiction amount is satisfied, and to
17 the extent there is a question I must resolve all doubts in favor of remand.

18 IT IS THEREFORE ORDERED the case is remanded to the state court from which it was
19 removed for all further proceedings. The Clerk of the Court is instructed to close this case.

20 DATED this 20th day of July, 2018.

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22 
23 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE